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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,906	10/30/2002	Alix T. Toland		3097
7590	10/05/2007		EXAMINER	
Cari & Offenberg Attorneys at Law 494 Broadway Newport, RI 02840			FERNSTROM, KURT	
			ART UNIT	PAPER NUMBER
			3711	
			MAIL DATE	DELIVERY MODE
			10/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



Notice of Abandonment

Application No.	Applicant(s)	
10/730,906	TOLAND, ALIX T.	
Examiner	Art Unit	
Kurt Fernstrom	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on 26 March 2007.
 - (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) No reply has been received.
2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) The issue fee and publication fee, if applicable, has not been received.
3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) No corrected drawings have been received.
4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. The reason(s) below:


KURT FERNSTROM
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,906	10/30/2002	Alix T. Toland		3097
7590 Cari & Offenberg Attorneys at Law 494 Broadway Newport, RI 02840		03/26/2007	EXAMINER FERNSTROM, KURT	
			ART UNIT 3711	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS		MAIL DATE 03/26/2007	DELIVERY MODE PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



Office Action Summary

	Application No.	Applicant(s)
	10/730,906	TOLAND, ALIX T.
Examiner	Art Unit	
Kurt Fernstrom	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) Notice of Informal Patent Application
- 6) Other: ____

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite as "color identification system" in the preamble, but recite both method steps and apparatus limitations in the bodies of the claims. It is not clear whether applicant is claiming an apparatus or a method. Clarification is required. Also, numerous dependent claims, including claims 3-5 and 8, recite intended uses of the device, rather than reciting concrete apparatus limitations or method steps. These claims fail to further limit the scope of the invention.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

According to the recently published "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (1300 OG 142, 22 November 2005), the analysis for determining patent eligible subject matter under §101 can be said to be subject to the following criteria:

1. Does the claimed invention fall within one of the four statutory categories (process, machine, manufacture or composition of matter)? If the answer to this criterion is no, then the claimed invention is not statutory eligible subject matter.
2. If the answer is yes to the first criterion, then does the claimed invention fall within a judicial exception? If the answer to this criterion is no, then the claimed invention would be statutory eligible subject matter.
3. If the answer is yes to the second criterion, then does the claimed invention provide a practical application of the judicial exception? If the answer to this criterion is yes, then the claimed invention would be statutory eligible subject matter, unless the claimed invention effectively preempts all substantial practical applications of the judicial exception, in which case the claimed invention would not be statutory eligible subject matter.

4. If the answer to the third criterion is no, then the claimed invention is not statutory eligible subject matter and is not eligible for patent protection.

With regards to the first criterion, as mentioned above it is not clear whether the claimed invention is an apparatus or a method. If it intended to be an apparatus the invention fails to meet the first criterion because no tangible form of the color form is recited. "Creating" a color form by associating colors with different types of information received encompasses imagining such a color scheme, or forming the color form on some nontangible medium. As a result, claim 1 interpreted as an apparatus claim is not statutory eligible subject matter.

If claim 1 is interpreted as a method, the steps recited can be considered a "process" and therefore the method broadly falls within one of the four statutory categories of invention. However, regarding the second criterion it is well settled that claims directed to nothing more than abstract ideas, natural phenomenon, and laws of nature (i.e. judicial exceptions) are not eligible and therefore are excluded from patent protection. Diehr, 450 U.S. at 185, 209 USPQ at 7; accord, e.g., Chakrabarty, 447 U.S. at 309, 206 USPQ at 197; Parker v. Flook, 437 U.S. 584, 589, 198 USPQ 193, 197 (1978); Benson, 409 U.S. at 67-68, 175 USPQ at 675; Funk, 333 U.S. at 130, 76 USPQ at 281. "A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right." Le Roy, 55 U.S. (14 How.) at 175. Instead, such "manifestations of laws of nature" are "part of the storehouse of knowledge," "free to all men and reserved exclusively to none." Funk, 333 U.S. at 130, 76 USPQ at 281. In this case, as mentioned above no

tangible form of the color form is recited in claim one. There is no tangible or concrete result of the method. As a result the method amounts to a manipulation abstract idea.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Winks, Bailey, Keenan, Heath, Suda, Trenkle, Bowmen, Quigley and Boyd disclose various astrological devices and methods. Chow, Perez and Tudor disclose color charts comprising concentric circles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (571) 272-4422. The examiner can normally be reached on M, T, Th 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KF
March 16, 2007



KURT FERNSTROM
PRIMARY EXAMINER

Notice of References Cited		Application/Control No.	Applicant(s)/Patent Under Reexamination	
		10/730,906	TOLAND, ALIX T.	
Examiner		Art Unit		Page 1 of 1
Kurt Fernstrom		3711		

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,015,295	01-2000	Winks, Jr., John Raymond	434/106
*	B	US-4,306,141	12-1981	Bailey et al.	235/78R
*	C	US-4,219,944	09-1980	Keenan, Joyce A.	434/106
*	D	US-4,195,424	04-1980	Heath, Joyce A.	434/106
*	E	US-4,193,213	03-1980	Suda, Kataro	434/106
*	F	US-4,117,608	10-1978	Trenkle, Eckhart	434/106
*	G	US-3,996,676	12-1976	Bowmen, Mary Teresa	434/106
*	H	US-5,516,289	05-1996	Quigley et al.	434/106
*	I	US-4,379,698	04-1983	Boyd, George M.	434/106
*	J	US-5,842,866	12-1998	Chow, Dong Lein	434/98
*	K	US-5,827,067	10-1998	Perez, Irma Maritza	434/208
*	L	US-3,088,227	05-1963	TUDOR CHARLES W	434/102
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)

Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.